IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: LW, MW, DW, IW	:	APPEAL NO. C-090628 TRIAL NO. F97-398x
	:	
	:	*JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Appellant Mamie Brown, the paternal grandmother of LW, MW, DW, and IW ("the children"), appeals the trial court's decision denying her motion for visitation with the children. For the following reasons, we affirm.

Before April 2001, all four children were placed in the legal custody of Brown. In April 2001, the children were removed from her home and placed in the temporary custody of the Hamilton County Department of Job and Family Services ("HCJFS") due to the sexualized and aggressive behaviors of LW at her Head Start preschool. This behavior began after Brown had allowed her son, the children's legal father, to live with her and the children. The children's father was a known sexual offender.

HCJFS moved for permanent custody of the children. Brown was a party to that proceeding and was represented by counsel. Following a hearing, permanent custody was awarded to HCJFS. We affirmed that decision in August 2004, noting that sufficient evidence had been presented to demonstrate that (1) LW and DW had

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

been sexually abused; (2) LW, DW, and IW had severe psychological issues due to past abuse; and (3) Brown would be unfit to supervise or adequately care for the children.[2] Brown appealed from our decision, but the Ohio Supreme Court declined jurisdiction.

In 2006, Brown again filed a motion for custody, which was dismissed by a magistrate. Brown filed objections, which were dismissed by the trial court. Brown did not appeal to this court. In January 2009, Brown filed a motion to modify the disposition of permanent custody to allow her to visit the children and to attend review hearings. Although Brown titled her motion as one for visitation, it was evident from the body of the motion that Brown was seeking custody of the children because she wanted to adopt them. The magistrate denied Brown's motion. Brown filed objections, which were overruled by the trial court. This appeal followed.

In her single assignment of error, Brown argues that the trial court erred by denying her motion to modify the disposition of permanent custody to allow visitation and her attendance at review hearings. We disagree.

Before we begin our analysis, we note that this appeal only involves the three older children, as the trial court no longer had jurisdiction over MW because he had been adopted at the time Brown filed her motion.

The trial court cited *In re McBride* in its decision denying Brown's motion. In *McBride*, the Ohio Supreme Court held that, under R.C. 2151.414(F) and 2151.353(E)(2), a parent who has lost permanent custody of a child does not have standing as a nonparent to later file a petition for custody of that child. In reaching that conclusion, the *McBride* court cited an Eleventh Appellate District case that held

[2] *In re IW*, 1st Dist. Nos. C-040182, C-040203, and C-040282, 2004-Ohio-4107, ¶31-32, 38.

that paternal grandparents lack standing under R.C. 2151.414(F) to file a motion for visitation after their child's parental rights have been terminated.[3]

Following *McBride* and *Nelson*, we hold that Brown, as the children's paternal grandmother, lacked standing under R.C. 2151.414(F) to file a motion for visitation because her son's parental rights had been terminated upon the award of permanent custody to HCJFS. But even if Brown had standing to seek visitation or modify the disposition of the permanent-custody order, the trial court properly denied Brown's motion on the basis of res judicata. As we have already noted, the gist of Brown's motion was that she wanted custody of the children. But that issue had been decided in the trial court's August 2004 decision removing the children from the custody of Brown and granting permanent custody to HCJFS. There Brown had been a party to the litigation and had been represented by counsel. Brown appealed from the award of permanent custody to HCJFS, and this court affirmed. Accordingly, the issue of whether it was in the best interest of the children to have continuing contact with Brown had already been litigated and decided. Thus, we cannot say that the trial court erred by denying Brown's motion.

The single assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and **MALLORY, JJ.**
To the Clerk:

Enter upon the Journal of the Court on September 22, 2010
per order of the Court _____.
Presiding Judge

[3] *In re Nelson* (Mar. 29, 1996), 11th Dist. No. 95-G-1918.